

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

L.T., an infant, by his mother and
natural guardian, WENDY TRIANO,
and WENDY TRIANO, Individually,

Plaintiff,

-against-

DOVER UNION FREE SCHOOL
DISTRICT, WINGDALE ELEMENTARY
SCHOOL, and CATHERINE ALVAREZ,
(in her official and individual capacity),

Defendant(s).

SUMMONS

Index No.:

Plaintiff designates Dutchess
County as the place of trial
based upon the location of
the occurrence.

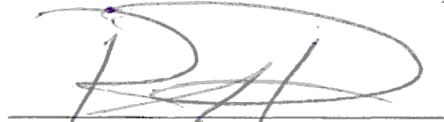
Plaintiff resides at:
23 Waldo Road
Pauling, New York 12564

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED TO ANSWER to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorney (s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint. A copy of the Summons and Complaint will be filed with the Supreme Court of the State of New York, County of Dutchess.

Dated: New York, New York
November 25, 2019

DeSIMONE & ASSOCIATES, LLC



Ralph DeSimone
Attorneys for Plaintiff(s)
745 Fifth Avenue, Suite 500
New York, New York 10151
(646) 776-7425

To: DOVER UNION FREE SCHOOL DISTRICT
2368 N.Y. Route 22
Dover Plains, New York 12522

WINGDALE ELEMENTARY SCHOOL
6413 State Rte. 55
Wingdale, New York 12594

CATHERINE ALVAREZ
6413 State Rte. 55
Wingdale, New York 12594

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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 L.T., an infant, by his mother and :
 natural guardian, WENDY TRIANO, :
 and WENDY TRIANO, Individually, :

 Plaintiffs, :

Index No.: _____

-against- :

COMPLAINT

DOVER UNION FREE SCHOOL :
 DISTRICT, WINGDALE ELEMENTARY :
 SCHOOL, and CATHERINE ALVAREZ, :
 (in her official and individual capacity), :

 Defendants. :

Venue is based on
 Residence of Plaintiffs
 under CPLR §503(a)

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Plaintiffs, L.T.¹, an infant, by his mother and natural guardian, Wendy Triano, and Wendy Triano, individually (“Plaintiffs”), by their attorneys DeSimone & Associates, LLC, by way of Complaint against defendants, Dover Union Free School District, Wingdale Elementary School and Catherine Alvarez, in her official and individual capacity (collectively referred to as “Defendants”) allege as follows:

PRELIMINARY STATEMENT

1. In this action, Plaintiffs, L.T., an infant, by his mother and natural guardian, Wendy Triano, and Wendy Triano, individually seek compensatory and punitive damages, an award of costs, interest and attorneys’ fees, and such other and further relief as this Court deems just and proper, for negligent acts of defendants, Dover Union Free School District, Wingdale Elementary School and Catherine Alvarez (in her official and individual capacity) in connection with L.T.’s attendance at Wingdale Elementary School, a public elementary school, located in Wingdale, New York. Plaintiffs bring this lawsuit alleging against Defendants claims of

¹ Pursuant to 22 NYCRR §202.5 (e)(1)(iii), Plaintiff, a minor, will be referred to by his initials.

negligent hiring, training, supervision and retention of employees that failed to safeguard and/or prevent repeated sexual abuse throughout his attendance at the aforementioned school causing him severe physical and emotional harm.

JURISDICTION AND VENUE

2. The Court has personal jurisdiction over defendants under CPLR 301 because defendants operate a public school in the State of New York.

3. Venue is proper under CPLR §503(a) because Wendy Triano and L.T. reside in Dutchess County, New York.

PARTIES

4. Plaintiff, J.T., born on March 20, 2006 is an infant, a citizen of Dutchess County in the State of New York, and at all times alleged herein was a student at Wingdale Elementary School.

5. Plaintiff Wendy Triano, a citizen of Dutchess County in the State of New York, is the mother and natural guardian of J.T.

6. At all times alleged herein, defendant Dover Union Free School District (the "District") is authorized to operate as a public school district in Dutchess County, New York under the Education Law of the State of New York with its principal place of business located at 2368 N.Y. Route 22, Dover Plains, New York 12522.

7. At all times alleged herein, Wingdale Elementary School ("Wingdale") is a public grade school within the District, located at 6413 State Rte. 55, Wingdale, New York 12594.

8. At all times alleged herein, Catherine Alvarez ("Principal Alvarez") is a citizen of the State of New York who was the Principal of Wingdale.

TIMELY COMMENCEMENT OF ACTION

9. Under the law of the State of New York, CPLR §214-g, the this action is not barred by any period of limitation requiring the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of this action.

STATEMENT OF FACTS

10. L.T. attended Wingdale from Kindergarten through second grade.

11. In February of 2012, when L.T. was in the First Grade, he began to act in an atypical manner. He showed signs of hostility, was getting into trouble in class and on the bus, sitting for long periods of time and began pulling out his hair.

12. In mid-May of 2012, after L.T.'s erratic behavior persisted, L.T. finally admitted to his parents that his classmate, a boy identified as M.S.² pulled down L.T.'s pants during school and grabbed L.T.'s penis.

13. Right after that incident occurred, L.T. told a School Aide, who took no action in response to L.T.

14. The next day, Triano visited Principal Alvarez and advised her of the sexual assault of L.T.

15. In response, Principal Alvarez dismissed Triano, and cavalierly responded that, "boys will be boys."

16. After informing Principal Alvarez of the abuse committed by M.S., Triano went to see the school social worker. During that meeting, the school social worker informed Triano

² In order to protect the identity of a minor, Plaintiffs pursuant to 22 NYCRR §202.5 (e)(1)(iii) will refer to this student of Wingdale by his initials, M.S.

that it was well known at school that M.S. was “infatuated” with L.T., and made excuses for the conduct of M.S. citing M.S.’s “difficult living situation.”

17. After speaking with the Principal Alvarez and school social worker, Triano spoke with the Superintendent of the District who also dismissed Triano’s concerns, and like Principal Alvarez, told Triano that “boys will be boys.”

18. Thereafter, Triano requested that the District remove M.S. from Wingdale, but the District refused her request.

19. Because she feared for the safety and well-being of her son, L.T., Triano, removed him from the First Grade, quit her full-time job and home-schooled L.T.

20. Eventually, the District informed Triano that M.S. would not be attending Second Grade at Wingdale.

21. Relying on the District’s representation, Triano enrolled L.T. at Wingdale to attend Second Grade. However, on the first of school, L.T. found out that M.S. was in fact attending school at Wingdale.

22. As a result, L.T. refused to go back to school.

23. Because Triano could no longer afford to miss work, L.T. was forced to attend Wingdale with M.S.

24. The District informed Triano that it would assign a teacher’s aide to monitor M.S., and that both boys would be separated at all times.

25. Thereafter, M.S. was not attended by any teacher’s aide. As a result, L.T. feared that M.S. would assault him during school.

26. At school, M.S. would threaten L.T. by telling him that “I know where you live.”

27. Having no alternative, L.T. continued his education at Wingdale and entered the Third Grade.

28. During November of the Third Grade, L.T. again showed signs of erratic behavior such as hostility, yelling and pulling his hair.

29. The reason for L.T.'s erratic behavior, at that time, was because M.S. followed L.T. into the bathroom. When L.T. exited the bathroom stall, M.S. pinned L.T. against the wall, pulled down L.T.'s pants, rubbed his penis against L.T.'s naked buttocks and grabbed L.T.'s penis.

30. After M.S. sexually assaulted L.T. in the bathroom for a second time, L.T. told his teacher of M.S.'s sexual abuse. In response, L.T.'s teacher dismissed L.T., and told him to "sit back down."

31. As a result of the sexual assault of M.S., L.T.'s behavior became worse and required psychiatric treatment and medication for PTSD, anxiety, depression, self-mutilation and trichotillomania. L.T. had also planned on committing suicide.

32. Upon information and belief, the District and Wingdale were aware of M.S.'s abuse of other Wingdale students, prior to his abuse of L.T.

33. As a result of the abuse of M.S., L.T. could no longer attend Wingdale.

FIRST CAUSE OF ACTION
(Negligent Hiring)

34. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth at length herein.

35. At all times alleged herein, the faculty, administration and staff of Wingdale were in an employer-employee relationship with the District.

36. The Defendants owed its students, including L.T., a duty of care to perform the requisite screening of administration, faculty and staff in order to hire competent employees.

37. The Defendants knew or should have known of the propensity of its administration, faculty and staff, to fail to safeguard its students from being sexually abused by other students, prior to the abuse of L.T., as set forth above.

38. The assaults committed M.S. against L.T., as set forth above, were committed on the school grounds, which were owned and/or operated by the Defendants.

39. The assaults committed by M.S., as set forth above, were the proximate cause of severe physical and emotional harm to L.T. that continues to this day.

40. Based on the foregoing, Defendants are liable to Plaintiffs for compensatory and punitive damages in an amount to be determined at trial as a result of its negligent hiring of the administration, faculty and staff of Wingdale.

SECOND CAUSE OF ACTION
(Negligent Training)

41. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth at length herein.

42. The Defendants owed its students, including L.T., a duty of care to properly train its administration, faculty and staff to safeguard them from sexual abuse of other students.

43. The District knew or should have known that a failure to do so would result in the sexual abuse of the minor students of Wingdale, including the sexual abuse of L.T., as set forth above.

44. The sexual assaults committed by M.S. against L.T., as set forth above, were committed on the school grounds, which were owned and operated by the Defendants.

45. The sexual assaults committed by M.S. against L.T., as set forth above, were the proximate cause of severe physical and emotional harm to L.T. that continue to this day.

46. Based on the foregoing, the Defendants are liable to Plaintiffs for compensatory and punitive damages in an amount to be determined at trial resulting from its negligent training of the faculty, administration and staff of Wingdale.

THIRD CAUSE OF ACTION
(Negligent Supervision)

47. Plaintiff repeat and reallege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth at length herein.

48. The Defendants owed L.T., a minor student, a duty of care to properly supervise its students to safeguard L.T. from sexual assault.

48. The Defendants failed to properly supervise its students, and knew or should have known that a failure to do so would result in the sexual assault of the minor students of Wingdale, including the sexual assault of L.T., as set forth above.

49. The acts of sexual assault committed by M.S. against L.T., as set forth above, were committed on the school grounds, which were owned and/or operated by the Defendants.

50. The acts of sexual assault committed by M.S. against L.T., as set forth above, were the proximate cause of severe physical and emotional harm to L.T. that continues to this day.

51. Based on the foregoing, Defendants are liable to Plaintiff's for compensatory and punitive damages in an amount to be determined at trial as a result of its negligent supervision of the students of Wingdale.

FOURTH CAUSE OF ACTION
(Negligent Retention)

52. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth at length herein.

53. The Defendants owed their students, including L.T., a duty of care to properly investigate complaints of sexual assault by other students.

54. The Defendants failed to properly investigate complaints of sexual assault as set forth above, and knew or should have known that a failure to do so would result in continued sexual abuse of L.T.

55. The acts of sexual assault committed by M.S. against L.T., were committed on the school grounds, which were owned and operated by Defendants.

56. The acts of sexual assault committed by M.S. against L.T., as set forth above, were the proximate cause of severe physical and emotional harm to L.T. that continues to this day.

57. Based on the foregoing, the Defendants are liable to Plaintiffs for compensatory and punitive damages in an amount to be determined at trial as a result of its negligent retention of employees that failed to safeguard L.T. from sexually assault.

FIFTH CAUSE OF ACTION
(Negligence)

58. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth at length herein.

59. The Defendants owed their students, including L.T., a duty of care to ensure that its administration, faculty and staff were competent to educate and safeguard their minor students, including L.T from sexual assault.

60. The District knew or should have known of the propensity of M.S. to sexually abuse the minor students of Wingdale, prior to the sexual abuse of L.T., as set forth above.

61. The acts of sexual assault committed by M.S. against L.T., as set forth above were committed on the school grounds, which were owned and operated by the Defendants.

62. The sexual assault committed by M.S. against L.T., as set forth above, were the proximate cause of severe physical and emotional harm to L.T. that continues to this day.

63. Based on the foregoing, the Defendants are liable to Plaintiffs for compensatory and punitive damages in an amount to be determined at trial as a result of its negligent failure to safeguard L.T. from sexual assault, as set forth above.

SITH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

64. Plaintiff repeat and reallege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as if fully set forth at length herein.

65. In failing to safeguard and/or prevent the acts of sexual abuse of L.T. committed by M.S., the Defendants acted in blatant disregard of the high degree of probability of the severe emotional distress and physical harm that L.T. would directly suffer.

66. The failure of the Defendants to safeguard L.T. from sexual abuse committed by M.S. was outrageous and extreme as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

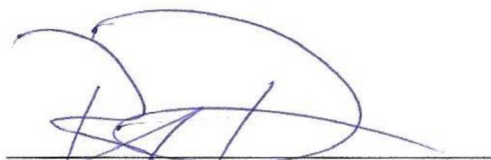
67. The failure of the Defendants to safeguard L.T. from sexual abuse committed by M.S. caused L.T. to directly suffer severe physical harm and emotional distress.

68. Consequently, the Defendants are liable to Plaintiffs for compensatory and punitive damages in an amount to be determined at trial as a result of its negligent infliction of emotion distress.

WHEREFORE, Plaintiffs, L.T., an infant, by his mother and natural guardian, Wendy Triano, and Wendy Triano, individually demand the following relief, jointly and severally, against defendants, Dover Union Free School District, Wingdale Elementary School and Catherine Alvarez (in her official and individual capacity):

- A. Compensatory damages in an amount to be determined by jury at the time of trial;
- B. Punitive damages in an amount to be determined by jury at the time of trial;
- C. Attorneys' fees, costs and interest; and
- D. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
November 25, 2019



RALPH DESIMONE, ESQ.
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New York, New York 10151
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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WENDY TRIANO, and WENDY TRIANO,
Individually,

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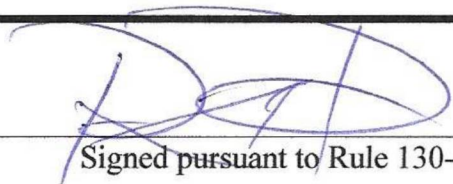
-against-

DOVER UNION FREE SCHOOL DISTRICT,
WINGDALE ELEMENTARY SCHOOL, and
CATHERINE ALVAREZ, (in her official and
Individual capacity),

Defendants.

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SUMMONS AND COMPLAINT


Signed pursuant to Rule 130-1.1a

DeSIMONE & ASSOCIATES, LLC
Attorneys for Plaintiff(s)
745 Fifth Avenue- Suite 500
New York, New York 10151

Telephone (646) 776-7425